DOCKET FILE COPY ORIGINAL

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
SEP 5 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
The State of New York Department of Public Service Request for the Release of a New Area Code to Provide Relief for the 716 Numbering Plan Area	)	NSD File No. L-00-161 CC Docket 96-98
	)	

DOCKET FILE COPY ORIGINAL

TO: The Common Carrier Bureau

COMMENTS OF WINSTAR COMMUNICATIONS, INC.

Winstar Communications, Inc. ("Winstar"), by its attorneys, hereby respectfully comments on the request of the State of New York Department of Public Service ("NYDPS") for the release of a new area code to provide relief for the 716 area code.[1] Winstar is a wireline competitive local exchange carrier ("CLEC"), using fixed wireless technology, with operations throughout the top 50 Market Service Areas ("MSAs") in the United States. The efficient utilization of numbering resources is crucial to the future of competition and all telecommunications carriers, including Winstar. Accordingly, Winstar has a direct interest in this proceeding. For the reasons explained below, Winstar urges the FCC to deny the NYDPS's request for authority to split rate centers, and clarify that the splitting of rate centers is not appropriate under any circumstances.

No. of Copies rec'd 0+4
List A B C D E

1 *Common Carrier Bureau Seeks Comment on the State of New York Department of Public Service Request for the Release of a New Area Code to Provide Relief for the 716 Numbering Plan Area*, Public Notice, DA 00-1806, NSD File No. L-00-161, CC Docket No. 96-98 (rel. Aug. 9, 2000) ("*Notice*").

I. RATE CENTER SPLITS WASTE NUMBERING RESOURCES, IMPOSE HEAVY BURDENS ON CARRIERS, AND CAUSE TECHNICAL PROBLEMS

Winstar respectfully submits that it is not appropriate to split rate centers under any circumstances. First and foremost, rate center splits inherently squander numbering resources. It is well established that the splitting of rate centers can lead to premature exhaust because it requires existing carriers to obtain duplicate central office ("CO") codes or 1,000 blocks in each NPA in order to continue to serve existing subscribers in each half of the rate center without requiring those subscribers to change their seven-digit telephone numbers,[2] as the Bureau recognizes in the *Notice*.[3] Equally as important, however, is that future carriers would have to order up to twice as many CO codes or 1,000 blocks in order to enter the market affected by the rate center split. Thus, even though the current effect of a rate center split can be calculated, it is not possible to estimate the future effect of a rate center split, particularly given the explicit goal of the Telecommunications Act of 1996 (the "Act") to foster competition and remove barriers to market entry. Therefore, area code relief that splits rate centers is inherently inconsistent with the efforts of the FCC, the states and the industry to optimize numbering utilization. In light of the massive resources that the FCC, the states and the industry have committed to the implementation of numbering optimization measures, the splitting of rate centers, which negates the beneficial effects to be gained by these measures, is simply unacceptable.

Second, implementation of a rate center split is very burdensome, particularly for competitive local exchange carriers ("CLECs") like Winstar whose facilities typically serve multiple rate centers and much larger geographic areas than the switches of incumbent local

---

2 Memorandum dated November 16, 1999 from John Hoffman, NANC Chair, to Larry Strickling, Chief, Common Carrier Bureau.

3 *Notice* at 2.

exchange carriers ("ILECs"). Although CO codes or 1,000 blocks are assigned to switches within specific rate centers, CLECs, for example, frequently assign telephone numbers within a CO code or 1,000 block throughout their entire rate area, which may cover multiple rate centers. Therefore, in order for a CLEC to determine the effects of a rate center split, it must identify the boundaries of the proposed split based upon ILEC wire center boundaries, encode these boundaries into a geographic mapping application, and run a query on all of its subscribers' service addresses in order to determine the ILEC wire center in which the subscriber is located. Once this process is complete, the CLEC must associate the subscriber's service address to an area code, and determine how each subscriber would be affected by the split. This process is extremely time consuming and fraught with potential errors that require frequent manual intervention.

Third, the splitting of rate centers can affect the implementation of local number portability ("LNP") and cause other technical problems, including those related to 911.[4] Rate center splits impose additional limits on LNP that can affect ILEC subscribers that port-in to CLECs as well as CLEC subscribers that port-in to the ILEC. These complications arise from the fact that telephone numbers can be ported to other geographic locations within a single rate center. For example, an ILEC's number may have been ported from a subscriber location that remains within the old NPA to a CLEC at a subscriber location that falls within the new NPA. If the CLEC requests and receives the duplicate CO code or 1,000 block, it can ensure that LNP default routing functions correctly by assigning the duplicate number to the subscriber. However, if the ILEC requests and receives the duplicate CO code or 1,000 block, the CLEC would have to request the ILEC to snap back the ported CO code and the CLEC would then port

---

4 Memorandum dated November 16, 1999 from John Hoffman, NANC Chair, to Larry Strickling, Chief, Common Carrier Bureau.

the duplicate CO code back to their end office. The subscriber's quality of services would be affected by the snap back and reporting process. The only other alternative is to require the subscriber to obtain an entirely new 10-digit telephone number.

With respect to 911, the splitting of rate centers introduces a number of additional complications. If a rate center is split, then the 911 trunking that serves the rate center for the old NPA must be duplicated to accommodate the rate center for the new NPA, and a new screen index, which performs complex translations that direct 911 calls from particular NPA-NXXs to the proper 911 trunk groups, must be established. The process is further complicated where a Public Safety Answering Point ("PSAP") falls within the new NPA. If a PSAP falls within the new NPA, the 911 trunk routing numbers must be changed, which affects all agencies that transfer emergency calls to the affected PSAP. Moreover, carriers must match the billing addresses of subscribers to the Master Street Address Guide ("MSAG") on a line-by-line basis such that each subscriber is assigned the correct NPA based on their physical location. This will ensure that 911 calls are routed to the correct 911 trunk group based on the NPA of the calling party. This process, like the process for associating subscribers' service addresses with area codes described above, is very time intensive and fraught with potential errors due to the amount of manual intervention that is necessary and the need to rely on ILEC data for ported numbers.

The most disturbing aspect of the potential errors that can occur when rate center splits are implemented is that the errors may not be noticed until the subscriber attempts to make a 911 call. If the subscriber is not properly matched to the correct street address, and thus NPA, in the 911 ALI database, the wrong NPA – and no address information – would be displayed at the receiving PSAP. Thus, if the line of the calling party goes off-hook for any reason during the 911 call, the operator will not be able to call the subscriber back (the phone number will be displayed with an incorrect NPD) or provide the subscriber's address to the authorities. Even if the 911 call is not disconnected, the subscriber may be routed to an incorrect PSAP.

Given the inherent and unavoidable problems caused by rate center splits, Winstar submits that all area code relief plans which split rate centers are fatally flawed. Accordingly, there is no need to decide on a case-by-case basis whether rate center splitting is acceptable, and there is absolutely no tension between the rule against splitting rate centers in the INC Guidelines and the authority delegated to states to implement area code relief.[5] Therefore, for the same reasons that both the North American Numbering Council ("NANC")[6] and the Industry Numbering Council ("INC") have concluded that rate center splits are unacceptable, the FCC should clarify that area code relief plans that cause rate centers to be split are inappropriate under all circumstances.

II. THE NYDPS HAS FAILED TO PROVIDE ADEQUATE SUPPORT FOR ITS REQUEST FOR AUTHORITY TO SPLIT RATE CENTERS

The NYDPS has not provided, nor could it provide, any reasonable justifications for splitting rate centers as part of the New York plan. Although the NYDPS recognizes that the proposed rate center splits will waste numbering resources, it claims that the FCC should nonetheless authorize it to split rate centers as part of the New York plan because: (1) the impact of the rate center split is allegedly minimal; and (2) the NYDPS has aggressively pursued measures designed to optimize the use of numbering resources. Winstar respectfully submits that the former assertion is inaccurate, and the latter assertion is irrelevant.

---

5 *See Notice* at ¶ 3.

6 Memorandum dated November 16, 1999 from John Hoffman, NANC Chair, to Larry Strickling, Chief, Common Carrier Bureau.

First, the impact of the rate center split that the NYDPS proposes is not minimal. By the NYDPS's own admission, the proposed rate center split will result in the immediate wasting of nearly 50 percent of the total number of CO codes preserved by number pooling to date.[7] This fact alone dictates against allowing the NYDPS to split rate centers. Worse yet, even more numbering resources will be wasted each time a new carrier enters the New York market. As explained above, future carriers would have to order up to twice as many NXX codes or 1,000 blocks in order to enter the market affected by the rate center split. In any event, the effects of the NYDPS's request will not be limited to New York, because the FCC's decision here will set a precedent that other states will follow. If the FCC allows the NYDPS to split rate centers, other states will undoubtedly request similar authority, which will result in the wasting of even more numbering resources. Consequently, the effect of the proposed rate center split cannot be characterized as minimal, particularly because it is impossible to predict its future impact.

Second, NYDPS' professed concern about numbering resources optimization and the policies it has instituted to conserve number resource are irrelevant to the question of whether the NYDPS should be allowed to split rate centers. Winstar lauds the NYDPS' efforts to implement numbering optimization measures, but these measures cannot ever justify the adoption of a relief plan that squanders numbering resources. The NYDPS' argument is akin to the reasoning of a man stranded in the desert who is convinced that he can wash his shirt because he has conserved water by drinking it judiciously. Winstar urges the FCC to clarify that aggressive implementation of numbering optimization measures cannot form the basis for adopting measures that waste numbering resources.

---

7 *See, e.g., Notice* at 2.

Finally, NYDPS has not identified any compelling reason for adopting a measure that wastes numbering resources, which ultimately affects end users throughout the NANP. Therefore, Winstar respectfully submits that the FCC should deny the NYDPS' request.

III. THE FCC SHOULD NOT AMEND THE PROCEDURES FOR ADOPTING INC GUIDELINES, OR THE REQUIREMENT THAT THE NANPA FOLLOW THEM

In the *Notice*, the FCC requests comment on the inter-relationship between the area code relief authority delegated to state commissions and the INC guidelines.[8] This request stems from the NYDPS complaint that its decision to split rate centers reflects viewpoints not represented in the INC Guidelines, and that the NYDPS is not legally bound by the INC Guidelines because the FCC has allegedly already delegated the authority to split rate centers to the states. Winstar respectfully submits that the procedures for adopting the INC Guidelines, as well as the role of the INC Guidelines in the federal numbering system, are appropriate, and that the FCC has already adopted procedures by which states, consumers, or anyone else can have the INC Guidelines amended.

In Section 251(e) of the Telecommunications Act of 1996 (the "1996 Act"), Congress granted the FCC "exclusive jurisdiction" over numbering.[9] Congress also instructed the FCC to "create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis."[10] In implementing Section 251(e), the FCC delegated to the states the limited authority to "resolve matters involving the introduction of new area codes within their states."[11]

---

8 *See Notice* at 3.

9 47 U.S.C. § 251(e)(1).

10 *Id.*

11 47 C.F.R. § 52.19(a).

The FCC expressly "decline[d] to authorize states to handle CO code assignment functions."[12] In so doing, it explained that:

> [w]hile we authorize states to resolve specific matters related to initiation and development of area code relief plans, we do not delegate the task of overall number allocation, whether for NPA codes or CO codes. To do so would vest in fifty-one separate commissions oversight of functions that we have already decided to centralize in the new NANPA. *A nationwide uniform system of numbering, necessarily including allocation of NPA and CO code resources, is essential to efficient delivery of telecommunications services in the United States.*[13]

Although the states have the general authority to "address matters related to the implementation of new area codes" subject to the FCC's numbering administration guidelines,[14] the FCC does not permit states to control CO code allocation since doing so could "lead to inconsistent application of [INC] CO code assignment guidelines."[15]

In exercising delegated authority, states must perform numbering administration in a manner consistent with the FCC's rules and regulations.[16] Thus, the FCC has specifically defined and limited the authority that it delegated to the states, and requires the states to exercise this authority consistent with the federal numbering framework. As part of this federal numbering framework, the FCC has also directed the NANPA to follow FCC rules and regulations and the INC Guidelines.[17] Accordingly, the authority that the FCC has delegated to the states is limited to the extent that a state may not direct the NANPA to disregard INC

---

12 Implementation of the Local Competition Provisions of the 1996 Telecommunications Act, Second Report and Order, 11 FCC Rcd 19392, ¶ 315 (1996) ("*Second Report and Order*").

13 *Id.* at ¶ 317 (emphasis added).

14 *See* 47 C.F.R. § 52.19(a).

15 *Second Report and Order*, ¶¶ 310, 321.

16 47 C.F.R. § 52.9(b).

17 *Administration of the North American Numbering Plan, Toll Free Service Access Codes,* Third Report and Order and Third Report and Order, 12 FCC Rcd 23040, ¶ 95 (1997) ("*Third Report and Order*").

Guidelines. Moreover, because the FCC adopted these rules and regulations after notice and comment in numbering proceedings, there is no merit whatsoever to the NYDPS's suggestion that it cannot legally be bound by the INC Guidelines without prior notice and the full regulatory procedure necessary to implement such delegation.

There is also no merit to the NYDPS' suggestion that the INC Guidelines are inappropriate because they do not reflect the full diversity of viewpoints. Perhaps most importantly, the NYDPS has the opportunity to participate in INC. Membership in INC is open to all industry members, and regulators and state commission representatives are particularly welcome. That NYDPS has chosen not to participate is no reason to vilify the process nor the resulting guidelines. The FCC has already created a procedure for resolving disputes regarding the application of any particular guideline. In the event of a dispute about a particular guideline, the Commission will address the dispute, either initially or after receiving a recommendation from the NANC, and will, if necessary, codify formal regulations to resolve the dispute.[18] The FCC has encouraged parties with disputes about the INC Guidelines to seek assistance from the NANC first. The FCC has carefully balanced the membership of the NANC so that it represents the numbering interests of state regulators, end users, and service providers.[19] Moreover, the FCC has codified an instruction to the NANC to adopt and use dispute resolution procedures that, for each dispute before the NANC, provide all interested parties: (1) notice of matters at issue; (2) a reasonable opportunity to make oral and written presentations; (3) a reasoned recommended resolution; and (4) a written report summarizing the recommendations and the underlying reasons.[20] Therefore, any party with a viewpoint that may not be reflected in the INC

---

18 *Id.*

19 *Id.*

20 *Id.* at ¶ 97.

Guidelines, including a state regulatory authority, can have a particular guideline modified by the NANC or the FCC, just as the NYDPS has requested here. Accordingly, there is no tension between the INC Guidelines and the authority that the FCC has delegated to the states, and there is no reason to modify the INC Guidelines or the process pursuant to which they are adopted or modified.

CONCLUSION

In light of the foregoing, Winstar respectfully submits that the FCC should deny the NYDPS' request, and clarify that the splitting of rate centers is not appropriate in any circumstances.

Respectfully submitted,

WINSTAR COMMUNICATIONS, INC.

Danny E. Adams
Todd D. Daubert
KELLEY DRYE & WARREN LLP
1200 19th Street, N.W.
Suite 500
Washington, D.C. 20036
(202) 955-9600

Its Attorneys

Russell C. Merbeth
WINSTAR COMMUNICATIONS, INC.
1615 L Street, N.W.
Suite 1260
Washington, D.C. 20036
(202) 367-7659

DATED: September 5, 2000

CERTIFICATE OF SERVICE

I, Courtenay P. Adams, hereby certify that, on September 5, 2000, a copy of the foregoing *Comments of Winstar Communications, Inc.* was delivered, by hand, to the following individuals:

Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, S.W., Suite TW-A325
Washington, D.C. 20554

Lawrence G. Malone, Esquire**
General Counsel to the
NYS Department of Public Service
Three Empire State Plaza
Albany, New York 12223-1350

Aaron Goldberger, Attorney Advisor
Network Services Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W. - Room 6A-207
Washington, D.C. 20554

Diane G. Harmon, Deputy Chief
Network Services Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W. - Room 6A-420
Washington, D.C. 20554

Al McCloud
Network Services Division
Federal Communications Commission
445 12th Street, S.W., Room 6A-320
Washington, D.C. 20554

Yog Varma, Deputy Bureau Chief
Common Carrier Bureau
Federal Communications Commission
445 Twelfth Street, S.W. – Rm. 5C-352
Washington, D.C. 20554

L. Charles Keller, Chief
Network Services Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W. - Room 6A-207
Washington, D.C. 20554

International Transcription Services, Inc.
1231 20th Street, N.W.
Washington, D.C. 20554

Courtenay P. Adams

Courtenay P. Adams

** Denotes Delivery By U.S. First-Class Mail, Postage Prepaid